REMARKS

I. Status of the Application

Claims 2, 4, 6-7, 9, 10, 13-20, 22-29, and 31-33 are now pending. Claims 2, 18 and 25 are independent. Claim 27 has herewith been amended. Claims 8, 11, 12, 21, and 30 are withdrawn. The amendments to the claims are supported by the application as filed. Accordingly, entry of the amendments is respectfully requested.

The claim amendments have not been submitted for any reason relating to patentability, or to overcome any rejection. Indeed, Applicants believe that the Action is too incomplete to establish a prima facie rejection and to fully respond, as such, Applicants reserve the right to pursue the subject matter of the previously presented, and of the previously or currently cancelled claims in one or more continuing applications.

II. Timing

Since all prior Office actions have been withdrawn under MPEP § 710.06, the Office action of May 12, 2008 is the first complete Office action during the prosecution of the present application. The remarks herein are responsive to the Office Action of May 12, 2008. The Office action sets a shortened statutory period of 1 month for reply; however, the MPEP § 710.06 states:

> "If the error is brought to the attention of the Office within the period for reply set in the Office action but more than 1 month after the date of the Office action, the Office will set a new period for reply, if requested to do so by the applicant, to substantially equal the time remaining in the reply period. For example, if the error is brought to the attention of the Office 5 weeks after mailing the action, then the Office would set a new 2-month period for reply."

Accordingly, since the 710.06 request was made 5 weeks and 2 days after the mailing of the deficient Office communication of August 15, 2007, the correct reply period for the present Office Action should be 2 months. Accordingly, the present paper is timely filed without any extensions of time. In the case that an extension of time is required, Applicants request any extensions necessitated by the filing of this response and

authorize any necessary fees not accompanied herewith to be withdrawn from Deposit Account No. 50-3938, with Order No. 01-1047.

III. Responsiveness

Since all prior Office Communications have been withdrawn under 710.06, no full reply has been necessary in the present application until this time. Accordingly, no omission or failure to respond has been made. Applicants are only required to respond to complete Office Actions that include details to which the Applicants can furnish a full and complete response. Any other Office Communications do not rise to the level of an Office Action because a full and complete reply cannot be provided.

IV. Election Requirement

Applicants maintain their previous traversal of the election requirement and reserve the right appeal the r evidence to support the need for the election. However, to facilitate prosecution of the claims, Applicants will move forward as if the election requirement were proper. Accordingly, Applicants believe that in view of the prior election with traverse of species 1b and 2c from the January 2007 Office Communication, that Claims 2, 4, 6-7, 9, 10, 13-20, 22-29, and 31-33 are pending and satisfy the election requirement.

V. No New Matter

Since the new matter issue raised in the office communication of the August 15, 2007 is not maintained in the Office action, Applicants believe that this issue has been withdrawn. Applicants request a notice to that effect.

Applicants reiterate that Paragraph (g) of the August 15, 2007 Office Action appears to raise a "new matter" issue. The new matter issue raised does not conform to any known new matter standard allowed under the MPEP or any other source of law, and therefore was improper.

VI. Claim Rejections – 35 U.S.C. § 101

Since the section 101 issue raised in the office communication of August 15, 2007 is not maintained in the Office action, Applicants believe that any such rejections have been withdrawn. Applicants request a notice to that effect.

Applicants reiterate that MPEP § 2106 provides instructions on § 101 including the following chart:

DETERMINE WHETHER THE CLAIMED INVENTION COMPLIES WITH THE SUBJECT MATTER ELIGIBILITY REQUIREMENT OF 35 U.S.C. 101

- Does the Claimed Invention Fall Within an Enumerated Statutory Category?
- Does the Claimed Invention Fall With a 35 U.S.C. 101 Judicial Exception – Law of Nature, Natural Phenomena or Abstract Idea?
- Does the Claimed Invention Cover a 35 U.S.C. 101 Judicial Exception, or a Practical Application of a 35 U.S.C. 101 Judicial Exception?
  - Practical Application by Physical Transformation?
  - Practical Application That Produces a Useful (35 U.S.C. 35 U.S.C. 101 utility), Tangible, and Concrete Result?
- Does the Claimed Invention Preempt a 35 U.S.C. 101 Judicial Exception (Abstract Idea, Law of Nature, or Natural Phenomenon)?
- Establish on the Record a Prima Facie Case

In the prior § 101 rejections, there is no identification of any "law of nature, natural phenomenon, or abstract idea" or discussion of a "practical application." Therefore, the prior rejections were improper.

VII. Claim Rejections – 35 U.S.C. § 102

The Office Action discussed claims 2, 4, 6, 7, 9, 10, 13-20, 22-29, and 31-33 under 35 U.S.C. § 102(b) as being allegedly unpatentable over cited sections of Great Britain patent No. GB 2,352,844 to Beuttell (hereinafter "Beuttell"). Applicants respectfully traverse these rejections and request reconsideration.

Independent claim 2 recites, in part, "*distributing at least a portion of profits* earned because of the deviation of the price of the outlier-price trade from the benchmark price, *to at least one second distributee participant of the plurality of distributee participants* in the market for the traded instrument or item." Beuttell does not teach or suggest such a limitation.

Rather, Beuttell describes a system that only monitors commodity trades to create an index that provides information about the commodities trades. Beuttell does not describe the distribution of any profits to any market participants, or more particularly, the distribution of any portion of profits associated with a trade involving a first distributee participant to *at least one second distributee participant of the plurality of distributee participants.*

Accordingly, by reciting "*distributing at least a portion of profits* earned because of the deviation of the price of the outlier-price trade from the benchmark price, *to at least one second distributee participant of the plurality of distributee participants* in the market for the traded instrument or item," independent claim 2 patentably distinguishes over Beuttell. Applicants therefore respectfully request withdrawal of the rejection of independent claim 2.

Independent claims 18 and 25 recite similar (though not identical) language, and are patentable for similar reasons." Each of dependent claims 4, 6, 7, 9, 10, 13-17, 19, 20, 22-24, 26-29, and 31-33 depend from at least one of allowable independent claims 2, 18, and 25. Accordingly, each of these dependent claims is allowable based at least on this dependence from an allowable claim.

VIII. Claim Rejections – 35 U.S.C. § 103

The Office Action rejected claims 2, 4, 6, 7, 9, 10, 13-20, 22-29, and 31-33 under 35 U.S.C. § 103(a) as being allegedly unpatentable over cited sections of The Clayton Antitrust Act of 1914 (hereinafter "CAA") in view of both cited sections of Energy and Electric Utilities State Laws and Regulations: Price Gouging (hereinafter "State Laws") and cited sections of Caffrey, "States try to deter power price gouging" (hereinafter "Caffrey"). Applicants respectfully traverse these rejections and request reconsideration.

Amended independent claim 2 recites, in part, "*distributing at least a portion of profits* earned because of the deviation of the price of the outlier-price trade from the benchmark price, *to at least one second distributee participant of the plurality of distributee participants* in the market for the traded instrument or item." The combination of CAA, State Laws, and Caffrey does not teach or suggest such a limitation.

CAA is a set of laws designed to prevent price discrimination by a distributor of an item in commerce. CAA makes certain acts of discriminatory sales illegal. State Laws is a collection of information about state regulations regarding price gouging. Some of these laws make it illegal to make sales of electricity at unconscionable prices or prices above some maximum level illegal and punishable, for example, by a fine. Caffrey is an article describing ways in which states attempt to prevent price gouging in the electrical power markets. Caffrey describes that states such as California and New York may fine energy generators who sell energy at unreasonable rates or collude with other generators to increase energy prices.

Each of CAA, State Laws, and Caffrey disclose ways of preventing trading. State Laws and Caffrey both disclose ways of preventing trading in the sometimes illiquid energy market to protect consumers from potentially illegal activities of producers in this market. None of these references teaches or suggests "*distributing at least a portion of profits* earned because of the deviation of the price of the outlier-price trade from the benchmark price, *to at least one second distributee participant of the plurality of distributee participants* in the market for the traded instrument or item," but rather, focus on preventing certain trades that may be categorized as outlier price trades from occurring at all.

Amended independent claim 2 may have the affect of making an otherwise not truly liquid market seem to operate as a liquid market despite natural price fluctuations that may result when non-constant demand occurs in a not truly liquid market. Although the energy market is an example of such a market, the cited references attempt to limit trades in that market to protect consumers from possible illegal activity rather than improving the performance of that market and/or encouraging trading in that market.

Accordingly, by reciting "*distributing at least a portion of profits* earned because of the deviation of the price of the outlier-price trade from the benchmark price, *to at least one second distributee participant of the plurality of distributee participants* in the market for the traded instrument or item," independent claim 2 patentably distinguishes over the combination of CAA, State Laws, and Caffrey. Applicants therefore respectfully request withdrawal of the rejection of independent claim 2.

Independent claims 18 and 25 recite similar (though not identical) language, and are patentable for similar reasons." Each of dependent claims 4, 6, 7, 9, 10, 13-17, 19, 20, 22-24, 26-29, and 31-33 depend from at least one of allowable independent claims 2, 18, and 25. Accordingly, each of these dependent claims is allowable based at least on this dependence from an allowable claim.

IX. Conclusion

Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, Applicant petitions for that extension of time required to make this response timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. CF/047 – 01-1047.

Respectfully submitted,

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